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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1990

Addendum

MAURITIUS 1/

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* Reissued for technical reasons.

1/ For the initial report submitted by the Government of Mauritius, see CCPR/C/1/Add.21; for its consideration by the Committee, see CCPR/C/SR.110-SR.111, and Official Records of the General Assembly, Thirty-third session, Supplement No. 40 (A/33/40), paras. 451-520. For the second periodic report of Mauritius, see CCPR/C/28/Add.12; for its consideration by the Committee, see CCPR/C/SR.904-SR.906 and Official Records of the General Assembly, Forty-fourth session, Supplement No. 40 (A/44/40), paras. 487-540.

The information submitted by Mauritius in accordance with the consolidated guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.60).

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PART II

Article 1

1. International agencies like the World Bank unreservedly quote Mauritius as being one of the safest examples of democracy in Africa, whether it is English-speaking or French-speaking Africa.

At section 1 of the Constitution of the Republic of Mauritius we read that Mauritius shall be a sovereign, democratic State. This means that the State is to be administered in accordance with the other provisions of the Constitution, which contain the essence of the democratic principles governing us. These include the guarantee of human rights and fundamental freedom ... (explained by Ramphul, J. in Lincoln v. Governor-General & Ors 1974 MR 112).

2. The Privy Council in Ste. United Docks & Ors v. The Government of Mauritius (1984) MR 174 adopted Lord Diplock's approach in interpretation of the Constitution in the case of A.G. of Gambia v. Mamodun Jobe (1984) 3 WLR 174 namely:

> "A constitution, and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the State are to be entitled, is to be given a generous and purposive construction."

3. Mauritius has at international forums consistently upheld and supported the right of people to self-determination (e.g. Palestine, Bosnia).

4. Nearer to it in the region, Mauritius has indirectly made a contribution to the restoration of democracy in South Africa. Mauritius has been among the first countries to establish diplomatic relations with South Africa after the first democratic elections held last year.

5.1 Mauritius has established a sound reputation for its democratic tradition (except for the period 1969-1971 during which a state of emergency was imposed).

5.2 In the wake of the state of emergency, general elections which were scheduled for 1971-72 were postponed to 1976 and local elections as well as by-elections at the national level were purely and simply abolished.

5.3 However, matters were set right in 1982 by an amendment to the Constitution (The Constitution of Mauritius (Amendment) Act, 1982) which now provides that no Bill to alter the life of Parliament shall be passed unless -

> "it has been submitted by referendum to the electorate of Mauritius and has been approved by the votes of not less than 3/4 of the electorate, and it is supported at the final voting in the Assembly by the votes of all the members of the National Assembly."

By the same amendment Act by-elections and local elections have been re-established.

6.1 More recently the Supreme Court has had the opportunity of making pronouncements on certain aspects of the holding of elections in Mauritius.

6.2 In the case of UDM v. Governor-General & Ors (1990 MR 118), the plaintiff challenged the validity of the Legislative Assembly Election regulations under sections 1, 3, 8 and 33 of the Constitution. These regulations required a prospective candidate in parliamentary elections to pay a deposit that would be forfeited if the candidate failed to obtain a certain percentage of the votes cast. In 1989, the regulations were amended by increasing the deposit from Mau Rs 250 to Mau Rs 10,000. The Court held that while the requirement of a deposit is not unconstitutional per se, the sum of the deposit prescribed by the Legislative Assembly Elections (Amendment) Regulations 1989 imposed an unconstitutional property qualification on candidates and held that these regulations were of no effect. (See annex I.)

6.3 In the case of Valayden & Ors v. The President of the Republic & Ors 1995 SCJ 16, (see annex II) a single writ was issued in the case of a by-election where there was more than one vacancy in a three-member constituency. There is no compulsion to vote under Mauritian law. The issue was whether electors could be compelled to vote for two candidates at that by-election, failing which their ballot paper would be declared invalid.

The Court held that it is not undemocratic or against any provision of the Constitution to require an elector to cast his votes for as many candidates as there are vacancies at a by-election. In a general election where there are three vacancies per constituency, voters are required by law to vote for three candidates.

7. It is apposite to note that after general elections, unsuccessful candidates may file election petitions requiring the Supreme Court to declare void the elections of their successful opponents on the ground of irregularities having been committed. The Supreme Court has in all such cases rejected the petitions.

Article 2

1. Mauritius being bilingual, both the English and French languages are familiar to a large section of the population.

2. Extracts from the English and French texts of the Covenant are very often given wide publicity in a largely read press.

3. Students at schools are now being made aware of human rights through a newly introduced subject, namely Human Values.

4. The local branch of Amnesty International is also very active and organizes many activities to make more popular the concept of Human Rights.

5. In September 1993 Universities of French-speaking countries chose to hold in Mauritius an International Colloquium on the importance of Human Rights in French-speaking countries.

This was organized in the context of the Francophone Summit where, again, Human Rights was the dominant theme.

These international meetings which were given wide publicity brought to the forefront the importance of Human Rights in Mauritius.

Mauritius was again cited as one of the pre-eminent African countries where Human Rights are given such a high respect.

6.1 Citizens alleging violation of rights or freedom under the Covenant have free access to the Court.

Section 17 (1) of the Constitution is as follows:

> "If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress".

6.2 The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law other than a disciplinary law or such jurisdiction and powers as may be conferred upon it by the Constitution.

6.3 We have in Mauritius an independent judiciary. That independence is guaranteed by the tenure of office of the Judges.

6.4 There exist procedures which guarantee the execution of judgements and awards.

6.5 Moreover the Court has now departed from the old practice of not issuing Injunctions against the State.

In the recent case of Rogers v. The Comptroller of Customs SCJ 115 of 1994 the applicant had imported a parabolic television antenna from South Africa. He paid the fiscal duty, import levy and sales tax in relation to the antenna.

He was refused delivery of same by the Respondent, and was told he should apply for a permit from the Telecommunications Authority on the ground that the installation of a parabolic antenna is not authorized in Mauritius.

The Court held that a person's right to receive broadcast is a component of the freedom of expression which is guaranteed by the Constitution and other instruments dealing with fundamental rights.

The Court, relying on the decision of the European Court of Human Rights on 22 May 1990 in the case AUTRONIC AG, directed the Respondent to deliver forthwith the parabolic television antenna to the applicant. (See Annex III.)

Article 3

1. Section 3 of the Constitution stipulates that no discrimination exists between men and women with regard to fundamental rights and freedom.

2. In the early 80s major amendments were brought to our Civil Code with a view to removing any discrimination against married women.

3. Section 5 of the Finance Act 1992 has given further rights to a married woman who is an employee or is exercising a liberal profession by including the "income derived from her profession" in the definition of "earned income" for Income Tax purposes.

4.1 The only discrimination that still exists on our Statute Book is to be found in the Laws regulating citizenship.

4.2 In the case of Guyot v. Government of Mauritius (1991) MR 156 the plaintiffs alleged that the Employment (Non-Citizens) (Restriction) Exemptions Regulations 1970 were discriminatory by reason of sex and breached the Constitution. The Regulations exempted the wife of a Mauritian citizen from obtaining a work permit before undertaking paid employment, but did not similarly provide for the husband of a Mauritian citizen.

The Court held that the differentiation in the Employment (Non-Citizens) (Restriction) Exemptions 1970 was not a discrimination based on sex which flouts the fundamental rights of the citizen to protection of the law under section 3 of the Constitution and that the differentiation was made not because a Mauritian woman enjoys fewer rights under the law, but because her husband is a foreign national who has not been granted privileges given to a foreign female spouse of a Mauritian citizen. (See Annex IV.)

The Court referred to the case of Union of Campement Site Owners and Lessees and ors v. Government of Mauritius and ors 1984 MR 100 where the Supreme Court had observed that it was not its role to pronounce on the consistency of the Mauritius Constitution and laws with the provisions of the International Covenant on Civil and Political Rights. That function devolves on the Human Rights Committee. (See Annex V.)

4.3 There have been official announcements that amendments will shortly be made to the Citizenship Laws to remove any discrimination against women.

4.4 The following sections of the law will consequently be amended:

Sections 16, 20, 21, 23, 24 of the Constitution

Sections 7, 9, 14 of the Mauritius Citizenship Act.

With these amendments all discrimination against women will come to an end.

Article 4

1. Section 18 of the Constitution provides for derogations from fundamental rights and freedom under emergency powers.

2. Recourse to this section is subject to strict controls. First, there must be a Proclamation by the President. Secondly the Proclamation needs the approval of 2/3 of the members of the National Assembly within a certain delay.

3. Moreover section 18 provides for the setting up of an impartial tribunal to control any abuse by the Executive in periods of emergency.

Article 5

1. The provisions of article 5 are consonant with our law to the extent that if the Covenant guarantees freedom of expression, it does not mean that this freedom of expression has no limits.

2. In R. v. Boodhoo & Anor 1990 MR 191, the Supreme Court held that S 299 of our Criminal Code which provides for the offence of publishing false news means that no one can blurt out any news which is shown to be false and of a nature likely to disturb public order and public peace and claim that he was under no obligation whatsoever to take reasonable steps to inquire as to its truth. The limitation on the freedom of expression is therefore reasonable and justified.

3.1 In Heeralall v. Commissioner of Prisons 1992 MR 70, the Supreme Court refused to recognize the existence of an Extradition Treaty between Mauritius and France where such a treaty had been concluded before Mauritius became independent.

3.2 On a more interesting note the Court doubted whether the Mauritian subject would benefit from the same fundamental rights, including right of due process, if he was extradited to France.

3.3 It was indirectly hinted that the Plaintiff could be deprived of the guarantee against forced interrogation and his right to silence. The Court refused to extradite him. (See Annex VI.)

Article 6

1. The right to life which is entrenched in the Constitution has been consistently upheld in practice.

2.1 The Geneva Conventions of 1949 have been incorporated into our law by virtue of the Geneva Conventions Act 1970 which makes it an offence to commit a grave breach of any of the four Geneva Conventions.

2.2 Mauritius has repeatedly pressed in regional and international forums for the demilitarization of the Indian Ocean and has advocated the concept of "Indian Ocean, zone of peace".

2.3 Mauritius was one of first States to sign the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and is now in the process of ratifying the said Convention.

2.4 Mauritius signed the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in 1968 and ratified same in 1969.

3.1 Life expectancy in Mauritius has increased from 63 years in 1972 to 70 years in 1993. The infant mortality rate which was 63.8 in 1972 declined to 19.6 in 1993 while the crude death rate dropped from 7.9 to 6.6 during the same period.

3.2 The general improvement in the health status of the population was made possible by an increase in the budget allocated to health from Rs 573 million in 1988 to Rs 1.1 billion in 1994. The hospital structure is being constantly upgraded and there is better distribution of health facilities across the country. Malaria is under control while an effective Expanded Programme on Immunization keeps all infectious diseases at bay. Nutrition has become a special programme of the Ministry of Health and a constant watch is kept on the nutrition of the population by regular national surveys; great emphasis is laid on the nutritional status of the child.

4.1 There is no military force so that there is no report of loss of life through excessive use of force by the military.

4.2 Regrettably there have been reports of incidents involving alleged police brutality. Following the death of a detainee in a police cell in 1994 (which was treated as suicide by the police), the Director of Public Prosecutions has required a judicial inquiry to be held into the cause and circumstances of the said death.

4.3 Another highly publicized incident involved one Eddy Labrosse who was arrested by the police and later found lying on the road, when he was supposed to be still in custody. He died a few days later, as a result of irreparable injuries to the skull. Following allegations of police brutality, the Director of Public Prosecutions (DPP) required a judicial inquiry into the causes and circumstances of the death of Labrosse. In the light of the findings of the Magistrate, the Director of Public Prosecutions has advised prosecution against two police officers for the offence of "Wounds and Blows causing Death without intention to kill".

5. Death penalty

5.1 The death penalty has not been abolished in Mauritius since the last Periodic Report, although the Prime Minister has made an official statement in February 1995 to the effect that the application of the death penalty will be henceforth suspended. There has been no execution since 1987.

5.2 The Supreme Court of Mauritius has, on at least two occasions, (see Amasimbi v. State (1992) MR 227 and Zakir Hussain Ikhtar Hussain Shaikh v. State (1994) SCJ 233) had the opportunity of reiterating the view that the mandatory death penalty for the offence of drug trafficking (see S 38 (4) of the Dangerous Drugs Act 1986) does not offend section 7 of the Mauritian Constitution, and that it is for Parliament to debate the pros and cons of a death sentence. It was argued in both cases that the grossly disproportionate nature of the sentence rendered it unconstitutional. But the Supreme Court observed that no court in this country would hold a person to be a trafficker and sentence him to death if he "went on a visit to a particular country where a drug such as gandia is easily obtained and, having agreed with a group of friends to bring back a certain quantity of that drug for them to have a group bash, returned to the country and distributed the drug at the party ..." (see Zakhir Hussain Ikhtar Hussain Shaikh v. State (94) SCJ 233 at p. 18).

5.3 Ten persons, all foreign couriers, have been sentenced to death under the Dangerous Drugs Act during the period 1988-1993. Two of them are women. Out of the 10 death sentences, 4 have been quashed by the Appellate Court while 2 have been commuted to a term of imprisonment. The remaining four cases are pending appeal.

5.4 The two persons who were sentenced to death for drug trafficking in 1987 (see para. 510 of General Assembly Document No. A/44/40) have had their sentences commuted to a term of imprisonment and they were both released in August 1993.

5.5 No person has been sentenced to death for murder since 1987. One person was convicted of murder in 1986 and is still on death row. His case is now being considered by the Commission on the Prerogative of Mercy. In the light of the decision of the Privy Council in the Jamaican case of Pratt v. Attorney-General of Jamaica (1993) 3 WLR 995 and of the statement made recently by the Prime Minister, this sentence may be commuted to life imprisonment. This prisoner has also made an application before the Supreme Court for a rehearing of his case on the ground of the obtention of evidence that was not previously available.

5.6 In 1992, the Commission on the Prerogative of Mercy considered the case of another person, who was sentenced to death for murder in 1987. His death sentence was commuted to 20 years' imprisonment without remission.

Article 7

1. The provisions of the Prisons Act have now been repealed and replaced by the Reform Institutions Act 1988 (see comments under art. 9).

2. The Supreme Court has again observed that death penalty does not offend section 7 of the Mauritian Constitution (see comments under art. 6).

3. In Heeralall v. Commissioner of Prisons (1992) MR 70, the Supreme Court indicated that it was bound by the provisions of the Constitution not to extradite somebody to a country where he would be deprived of the guarantees against forced interrogation and of his right to silence, since the Mauritian courts would not be in a position to protect that person or to ensure that those guarantees (which are entrenched in our Constitution) are made available to him. The Supreme Court relied to some extent on the judgement of the European Court in the case of Soering v. Government of the United Kingdom (1989). (See Annex VI.)

Article 8

1. There is no slavery in Mauritius so that it has not proved necessary to enact any legislation against it.

2. The performance of hard labour in pursuance of a sentence imposed by Court consists mainly of training inmates in various trades like manufacture of furniture or bakery.

Article 9

1. The Bail Act 1989 (see Annex VII) governs the detention and release of detainees and provides, inter alia, that every detainee shall be brought before a Magistrate within a reasonable time of his arrest or detention, and that a detainee shall not be entitled to be released on bail where:

(a) he has broken any condition of bail;

(b) he has not complied with any other condition upon which he has been released;

(c) he is not likely to abide by the conditions of his bail, if released;

(d) his continued detention is necessary:

(i) for his own protection;

(ii) for the protection of the public or any likely witness or any evidence;

(iii) for his own welfare, if he is a child or a young person;

(iv) for the reason that it would not be practicable to complete the police inquiry if he is released;

(v) in view of the seriousness of the offence and the heavy penalty provided by law;

(vi) in view of his character and antecedents; or

(vii) in view of the fact that he is a fugitive from justice.

2.1 The Supreme Court has observed in the case of Sheriff v. District Magistrate of Port Louis (1989) MR 260 that it is only "in exceptional circumstances that the liberty of the subject can be subordinated to the greater needs of society requiring the forfeiture of his freedom ... Detention is the ultimate weapon that the authorities should resort to when everything else has failed."

2.2 In DPP v. IOIB and Shanto (1989) MR 110, reference is made to the practice of entering a provisional information, when a suspect is arrested or brought into custody, in order to bring the detention of the individual under judicial supervision and control, and to prevent administrative detention. It will then be for the judicial authority to decide whether the detainee should be released on bail or not.

2.3 The Supreme Court has also made it clear in Hossen v. District Magistrate of Port Louis (1993) MR 9 that since the Constitution specifies that a suspect must be released unless brought to trial within a reasonable time, the Court may, irrespective of the Bail Act, release a detained person if it can be shown that the authorities responsible for inquiring into an offence are procrastinating.

3.1 The Constitution of Mauritius (Amendment) Act 1994 provides that where a person is arrested or detained for certain drug offences (to be prescribed), he shall not be admitted to bail until the final determination of the proceedings brought against him, where:

(i) he has already been convicted of a drug offence;

(ii) he is arrested or detained for a drug offence during the period that he has been released on bail after he has been charged with having committed a drug offence.

3.2 The drug offences to which the 1994 Act will apply are likely to be prescribed in the course of 1995 when legislation will be enacted to implement the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, which Mauritius signed in 1988.

Article 10

1. The Reform Institutions Act 1988 repealed the Prisons Act, the Prison Proclamation, the Borstal Institution Act (see p. 17 of the Initial Report) as well as a number of other enactments relating to reform institutions. The Juvenile Offenders Act is still in force.

2. The administration of reform institutions and the control and supervision of detainees therein are now vested in the Commissioner of Prisons, who reports to the Minister of Reform Institutions on the general condition of institutions and detainees.

3.1 Prison officers are given the powers of police officers in certain circumstances and may, inter alia:

(1) examine anything within or being brought into or taken out of a reform institution;

(2) stop and search any vehicle or person going in or out of a reform institution, where it is reasonably suspected that the vehicle or person is carrying a prohibited article;

(3) refuse to admit to the institution a person, other than a detainee or prison officer, who is not willing to be searched.

3.2 Prison Officers are not allowed to use force against detainees except such force as is reasonably necessary:

(a) in self defence;

(b) in the defence of another person;

(c) to prevent a detainee from escaping;

(d) to compel obedience to an order which the detainee wilfully refuses to obey; or

(e) to maintain discipline in the institution.

3.3 They may only use weapons or firearms as a last resort in specified circumstances, for example, when a detainee is escaping or attempting to escape, or is engaged with others in riotous behaviour in the institution or is endangering the life of any person.

4.1 Detainees are, during the term of their detention, subject to institution discipline and to the provisions of the Reform Institutions Act and any regulations made thereunder. On admission, they are given inter alia the following facilities:

(a) a bath or shower;

(b) a medical examination;

(c) sufficient information as to:

(i) disciplinary requirements of the institution;

(ii) earnings and privileges;

(iii) the proper methods of making complaints as to food, clothing, bedding and other necessities.

4.2 Male and female detainees are confined in separate institutions or in separate parts of an institution. The infant child of a female detainee may be received into an institution with his mother until he is four or

as soon as arrangements for his proper care outside the institution can be made. Lydia Wakuka Jensen, a Kenyan national, who was convicted in November 1994 of importing heroin, was four months pregnant when she arrived in Mauritius. She gave birth whilst in detention in Mauritius and arrangements have been made by the authorities for her baby to remain with her in prison. The authorities are now envisaging the possibility of sending back convicted persons to their home country to serve their sentence there.

4.3 No person can be searched in an institution otherwise than by a person of the same sex.

4.4 Detainees may make complaints to:

(a) a member of the Board of Visitors (which is composed of not less than three Magistrates, a State Law Officer and four other members) or the Discharged Persons' Aid Committee;

(b) the Commissioner of Prisons;

(c) officers designated by the Commissioner of Prisons to hear complaint.

Adult detainees may also petition the President of the Republic.

4.5 A detainee may only be subjected to punishment or privation in the following circumstances:

(a) when found guilty of a minor prison default (see Part VIII of the Prison Regulations 1989) after due inquiry by the Commissioner of Prisons by:

(i) confinement in a separate cell for a period not exceeding two weeks;

(ii) the forfeiture of his privileges for a period not exceeding three months;

(iii) the forfeiture of his earnings for a period not exceeding three months;

(iv) a loss of remission for a period not exceeding two months;

(v) a combination of any of the punishments specified above;

(b) when found guilty of an aggravated prison default, after due inquiry by the officer in charge, the Commissioner of Prisons and the Board of Visitors, by:

(i) confinement in a separate cell for a period not exceeding 30 days;

(ii) a loss of remission for a period not exceeding 12 months;

(iii) a reduction in the "stage" (level of training) or postponement of promotion in the stage of detainee for a period not exceeding six months;

(iv) forfeiture of his privileges for a period not exceeding six months;

(v) forfeiture of his earnings for a period not exceeding six months;

(vi) a combination of the punishments specified above.

4.6 In specified circumstances, detainees may be segregated, temporarily confined in separate or special rooms or kept under special watch. They may also be handcuffed or placed under restraint.

4.7 Detainees are given religious instruction and training as well as moral advice by priests who belong to the same religious denomination and who may also perform religious rites in prison.

4.8 Detainees who are not employed on outdoor work are allowed at least one hour of suitable exercise in the open air daily if the weather permits. Provision may be made for their education. One detainee, who was sentenced to death and who had his death sentence commuted to a term of imprisonment (see para. 5.6 above), recently obtained a Diploma in Journalism by correspondence.

5.1 The Prisons Regulations 1989 provide for:

(a) unconvicted detainees to be kept away from convicted detainees as far as reasonably possible, and

(b) young persons (between the ages of 17 and 21) to be kept separate from adult detainees as far as reasonably possible.

5.2 Unconvicted detainees may be authorized to bring in or purchase food or clothing, as well as to receive cigarettes and toilet articles from their private resources.

6.1 The Reform Institutions Act 1988 provides for:

(1) Correctional Youth Centres, for the detention and training of juvenile offenders (between the ages of 11 and 17) and young persons (between the ages of 17 and 21), and

(2) Rehabilitation Youth Centres for the detention and training of children (not over 11 years of age) and juvenile offenders.

6.2 The Court will send a non-adult offender to a Correctional Youth Centre or to a Rehabilitation Youth Centre, when it is satisfied that it is expedient for his reformation that he should undergo training there.

6.3 It is worth noting that prisoners on death row have free access to reading material (including books, magazines and newspapers) and can write letters freely and see their lawyers during working hours. They are also entitled to daily visits from their relatives. The only "privilege" that is denied to them is the possibility of obtaining food from relatives.

Article 11

The Supreme Court has observed in the case of Pelladoah v. Development Bank of Mauritius (1992) MR 5 that the provisions of Section 26 of the Courts (Civil Procedure) Act 1856 relating to imprisonment for debt may have to be reviewed substantially or procedurally since they date back to the last century and are no longer in compliance with international norms. Express reference is made, inter alia, to article 11 of the Covenant. Fortunately for the judgement debtor in this case his appeal was allowed on facts. (See Annex VIII.)

Articles 12 and 13

1. The Supreme Court considered the issue of the extension of residence permits in Gorfinkel v. Passport and Immigration Officer (1991) MR 30, where it held that a foreigner could only rely on the doctrine of "legitimate expectation" where his permit had been cancelled before its expiry, in which case an order to stay for the remaining period may be obtained after a hearing. Where the issue was the renewal of an expired residence permit, the Court would only intervene if the Minister responsible for issuing the permits had done an unlawful act.

2. In July 1993, an application was made on behalf of one "Darmanan Jogee", a Mauritian citizen, and one Antoinette Sonia Nilmini Megadama, a non-citizen who was allegedly pregnant of a Mauritian child, for an interim injunction to stay the execution of a deportation order made against Ms. Megadama. The application was supported by an affidavit solemnly affirmed by the said "Jogee". It was subsequently discovered that the real Darmanan Jogee, who was married to Ms. Megadama, had never sworn an affidavit in support of the application. In the light of the disquieting features surrounding the application, the deportation order was executed before the application could be heard. The Learned Judge who was hearing the application found that he had been deprived of his jurisdiction by a deliberate act of the Executive and referred the matter to the Director of Public Prosecutions. No contempt proceedings were instituted by the Director of Public Prosecutions.

Article 14

Paragraph 1 of article 14

1. Section 10 (10) of the Constitution provides that persons other than the parties and their legal representatives may be excluded from the proceedings of the court or other authority (except the announcement of the decision of the court or authority) "to such extent as the court or other authority:

(a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of 18 years or the protection of the privacy of persons concerned in the proceedings; or

(b) may by law be empowered or required to do so in the interests of defence, public safety or public order."

1.2 Section 161A of the Courts Act further provides that:

"Any Judge, Magistrate or other person having by law authority to hear, receive or examine evidence may, where he considers it necessary or expedient:

(a) in circumstances where publicity would prejudice the interests of justice or of public morality;

(b) in order to safeguard the welfare of persons under the age of 18;

(c) in order to protect the privacy of persons concerned in the proceedings;

(d) in the interests of defence, public safety or public order,

exclude from the proceedings (except the announcement of the decision) any person other than the parties to the trial and their legal representatives."

1.3 Section 18B of the Courts Act regulates the publication of information relating to proceedings before any Court sitting in private.

1.4 Section 7 of the Juvenile Offenders Act provides that no newspaper report of any proceedings in a juvenile court shall reveal the name, address or school or include any particulars calculated to lead to the identification of any juvenile concerned in those proceedings. No photograph or picture of such a juvenile shall be published in a newspaper. The Court or the President of the Republic may dispense with the above requirements in the interests of justice.

2.1 The Supreme Court considered section 161A of the Courts Act in the case of Duval v. District Magistrate of Flacq (1990) MR 36 and observed that everyone who presides over a Court of Law has an inherent power to exclude an individual from attending proceedings.

2.2 In the subsequent case of Andony v. State (1992) MR 249, the Supreme Court stressed that:

(a) section 161A of the Courts Act, being a derogation from section 10 (9) of the Constitution, had to be interpreted restrictively,

(b) an accused person cannot, in a democratic society, be deprived of his constitutional right to a public trial unless there are compelling reasons to do so. These reasons have to be set out.

2.3 In the case of Jandoo v. State (1993) SCJ 332, the Supreme Court upheld the decision of the lower court to hold proceedings in camera, on the basis of the evidence contained in the statements of the accused which had made the court aware of "the sort of salacious details" which were likely to be delved into when the declarant came to depone. The Court also held that no unfairness could have resulted to the appellants (the accused in the lower court) since they were present when the declarant deponed and they were represented by Counsel of their choice. Some cases of rape are tried before the Intermediate Court (where the normal maximum sentence of penal servitude that can be imposed is eight years). The Court consisting of two magistrates sometimes excludes the public from the hearing. This has never been the case for a rape case tried at the Assizes before a judge and jury. The victim still has to depone in the physical presence of the accused.

Paragraph 3 (c) of article 14

1. The Supreme Court has held in Dahall v. State (1993) MR 220 that the lower court should have granted a stay of proceedings where the appellant was arrested in 1991 in relation to an offence committed in 1983, and proceedings were only instituted against him in 1992. The Accused had fled from the country to South Africa. The Court relied on the Privy Council decision of Attorney-General of Hong Kong v. Cheung Wai Bun (1993) 2 AER 510.

1.2 In the case of Duval v. District Magistrate of Flacq (1989) MR 166 (where prosecution took place 18 years after the commission of the offence), the Supreme Court observed that

(a) the right of a person not to be charged with an offence after an unreasonable lapse of time must be balanced with the right of a society to seek justice;

(b) there is no time-restraint in the initiation of criminal proceedings.

Paragraph (3) (d) of article 14

1. In the case of Gulam Rassool and Mukhtar Ali v. Government of Mauritius (1989) MR 222, the Supreme Court held that the fact that the Legal Aid Act did not provide for appeals to the Judicial Committee of the Privy Council did not constitute a breach of section 10 of the Constitution since this section only applied to the trial of a person charged with an offence. The Supreme Court went on to observe that while the State may be in breach of Article 14 of the Covenant, the Supreme Court had no jurisdiction to sanction breaches of the Covenant. (See Annex IX.)

However it must be pointed out that a convicted person may make an application to the Privy Council for his case to be heard. If the Privy Council finds that his appeal raises an important point of law, the Government of Mauritius is bound to defray all the costs of the appeal, which can be quite substantial under the English system, the appellant has the right to a Solicitor and Counsel of his choice. In the case of Boucherville his application was granted. The Government spent £4,000 on the preparation of the brief and £12,000 on legal fees. The appeal was later dismissed.

1.2 The Supreme Court has also intimated in the case of Wright v. R (90) SCJ 230 that where very serious offences are being dealt with, Magistrates would be well advised to remind accused of their right to Counsel but this does not apply where accused has already stated that he will not retain Counsel.

Paragraph (3) (e) of article 14

The Supreme Court has observed in Bacha, Kowlessur and Barbeau v. Boodhoo (1989) MR 51 that the court will not interfere with the right of an accused "to obtain the attendance and carry out the examination of witnesses to testify on his behalf" unless it is abundantly shown that the summoning of the witness is an abuse, made in bad faith, of such constitutional right. Any witness who feels he has been unnecessarily summoned may apply with an affidavit in support to a Judge in Chambers to have the summons set aside.

Paragraph 5 of article 14

The Judicial and Legal Provision Act 1994 gives a right of appeal against conviction or sentence to every person convicted before the Supreme Court. Previously, leave to appeal was needed in certain circumstances. [Section 5 of the Criminal Appeal Act.]

Paragraph 7 of article 14

The Judicial and Legal Provisions Act 1994 provides that when a person is appealing to the Supreme Court against a conviction and the Supreme Court is of the opinion that a serious irregularity has occurred, it may declare the trial to be a nullity and order a fresh hearing. Under the Criminal Appeal Act the Supreme Court may hear new evidence on appeal. There is however no record of such a procedure having been ever followed.

Articles 15 and 16

There has been no significant development since the last Periodic Report.

Article 17

Privacy

1. An amendment to the Dangerous Drugs Act was voted in 1994, providing for an application to be made to a Magistrate to submit a person reasonably suspected of having concealed any drug inside his body to medical examination or treatment. Such a measure was deemed necessary when a number of drug couriers were found to have brought heroin into the country in their body orifices. This amendment will also assist investigators who have to deal with people who simply swallow any dangerous drug in their possession when they see the police. (See Annex X.)

1.2 As far as civil cases are concerned, the Supreme Court has remarked in the case of Payet v. Seagull Insurance Co (1990) MR 347 that no person can be compelled to submit himself to medical examination.

1.3 Computers are increasingly being used for the storing and processing of information and the need to have legislation preserving the confidentiality of data (whether in computers or in other files) is now being felt.

1.4 In 1994, in the wake of reports to the effect that lawyers were furnishing prisoners with drugs, the Commissioner of Prisons ordered the bodily search of all lawyers coming to visit prisoners on remand but this measure was discontinued about 10 days later. On protest from the Mauritius Bar Association, a separate room has now been reserved for such visits and it is the prisoners who are searched after the visit.

Correspondence

The Supreme Court has made it clear in the case of Chairman of MBC v. Liu Fai (1993) MR 155 that no employer has the right to open a letter addressed to his employee. In that case the employer was opening letters addressed to a trade union official.

Article 18

1. The Supreme Court, in the case of Aumeer v. L'Assemble de Dieu (88) MR 229, held that the right to freedom of thought and religion includes the right to manifest and propagate one's religion or belief in worship, teaching, practice and observance. The Supreme Court stressed, however, that this right should be exercised in a civilized society in such a way as not to cause inconvenience to others. The religious sect used to hold afternoon prayers in residential areas.

2. In the case of Bhewa v. Government of Mauritius (1990) MR 79, the Supreme Court held that the provisions of the Constitution cannot be relied upon

as authority for the proposition that the enactment of personal laws is essential for the enjoyment of religious freedom. Thus Muslim personal law has not been introduced in Mauritius.

3. When considering a divorce case, the Supreme Court held that changing one's religion cannot in itself constitute a "faute" which would entitle the other spouse to a divorce whereas a person who prevents his/her spouse from practising a chosen religion commits a "faute" which may entitle the other spouse to a divorce. (See Veeramootoo v. Veeramootoo (1991) MR 39.)

Article 19

1. Freedom of expression is protected under section 12 of the Constitution and this is largely reflected in practice. The media is represented by a dozen of privately owned daily, weekly and monthly newspapers ventilating political viewpoints and freely expressing partial or partisan views. The press is reputed to be independent of any governmental influence and is at times highly critical of the latter.

1.2 The press, highly knowledgeable of the rights of the citizens, contribute towards the democratic process by making authorities accountable for any abuse which may result from their dealings with the citizen. At present the only radio and television station in the country is controlled by a parastatal body set up by Government. In view of the Government's latest expressed policy regarding the liberalization of the air waves, it is anticipated that in a very near future, independent radio and television stations will be allowed to broadcast nationally. The authorities have already given the green light to the introduction of satellite dishes (parabolic antenna) in the country through a licensing system. There was at first some reluctance on the part of the authorities to allow the free importation of satellite dishes. Some people attributed this stand to Government's wish to maintain a monopoly of radio and television. However French TV programmes from Reunion Island are beamed on to Mauritius freely and there is no restriction on the reception of world radio broadcasts. The opponents to satellite dishes invoke the deculturization process when children watch video clips the whole day or adults become addicted to American serials like Santa Barbara. Some claim that with the globalization of the waves, the Indian subcontinent and South East Asia will lose their cultural identity. The people who can afford it are now receiving CNN, some French and Russian programmes. The costs may go down considerably fairly soon.

2.1 There exist however, under the Criminal Code, offences such as "publishing false news" and "libel" to curtail any abuse on the part of the press. In the case of Glover v Boodhoo (1992) MR 259, the Supreme Court observed that the abuse of freedom of expression by the press amounted to oppression by the press where the comments made may undermine the respect of the Courts and bring such impossible pressure on the Courts that the serene despatch of Court business is thereby hampered. (See Annex XI.)

2.2 In R. v. Boodhoo and anor (1990) MR 191, the Supreme Court held that section 299 of the Criminal Code which creates the offence of "publishing

false news" deals with the diffusion or publication of news which is false, or which though true in substance has been altered or falsely attributed to another person, where the publication or diffusion is of such a nature as to disturb public order or peace. The Court went on to observe that it is an area where the objective of the limitation on the guaranteed constitutional right of freedom of expression is of sufficient importance and the means chosen are reasonable and demonstrably justified. An ex-Minister was attacking the ex-Chief Justice because the latter allowed his son to appear before him in cases called in the Supreme Court.

2.3 Prosecution under section 299 of the Criminal Code will only be brought in exceptional circumstances. In 1991, two journalists were prosecuted under this section and acquitted by the lower court. The Director of Public Prosecutions appealed to the Supreme Court but when the appeal was allowed and the case remitted to the lower court for a fresh hearing, the Director of Public Prosecutions lodged a Nolle Prosequi in the lower court and discontinued proceedings.

3.1 Journalists were also prosecuted for "Contempt of Court" in 1994, following an article in a leading daily which imputed bias to the Chief Justice and to certain judges of the Supreme Court for having decided to fix a case for hearing on a certain date. The journalists were found guilty and inflicted a heavy fine. They are now seeking leave to appeal to the Judicial Committee of the Privy Council. (D.P.P. v. Gilbert Ahnee & Ors, (1994) SCJ 100.) (See Annex XII.)

Some people reproach newspapers for indulging in sensationalism and for not verifying the truth of what they publish. Some years back the Government attempted to compel newspapers to furnish financial guarantees so that proprietors, editors and journalists ordered by Court to pay damages to victim after libel suits would be able to fulfil these obligations. After receiving representations concerning freedom of the press, the authorities drastically reduced the amounts that had to be furnished as guarantee.

3.2 The Judicial and Legal Provisions Act 1994 now provides for the powers of the Supreme Court in cases of contempt. Upon a motion supported by affidavit, to the effect that a person has committed a contempt, the court may:

(1) sentence that person to imprisonment for a term not exceeding one year or to a fine not exceeding Rs 30,000;

(2) make such order as it thinks fit.

4.1 Following representations from cultural and religious organizations, a book was withdrawn from the local bookstalls in 1994. The title of the book was "The Rape of Sita" and the names of the protagonists in the book bore a close resemblance to the names of major figures in a Hindu scripture, the Ramayana. There have been strong protests from the writer and some sections of the population.

4.2 It is worth noting that the circulation of "The Satanic Verses" of Salman Rushdie is prohibited in Mauritius so as not to offend Muslims. Another newspaper editor was attacked recently for publishing articles about the life of the Prophet Mahomed.

Article 20

Propaganda for war

1. The Criminal Code (Amendment) Act 1993 has repealed and amended some of the relevant provisions of the Criminal Code (see Initial Report). The offences of "stirring up war against the State" and of "stirring up civil war" are punishable by death while the offence of "Inciting citizen to rise up in arms" is punishable by death and forfeiture of property.

1.2 Section 71 of the Criminal Code now provides that:

"Any person who, by words spoken in a public place or meeting, or by posted placards, or by any writing or printing, directly incites to the commission of any of the crimes (above-mentioned) shall be punished as guilty of such crime (...), but where such incitement produces no effect, the offenders shall be punished by penal servitude."

Advocacy of national, racial or religious hatred

2.1 The Criminal Code (Amendment) Act 1993 has also repealed and replaced section 283 of the Criminal Code, which relates to the offence of "sedition" and which now reads as follows:

(1) Any person who (by committing an outrage against public and religious morality) raises discontent or disaffection among the citizens of Mauritius or promotes feelings of ill will and hostility between different classes of (...) citizens ... shall commit the offence of sedition and shall, on conviction, be liable to imprisonment for a term not exceeding one year and a fine not exceeding 5,000 rupees."

2.2 The Public Gathering Act 1991 has added the offence of "stirring up racial hatred" to the Criminal Code. It reads as follows -

"Section 282

(1) Any person who, with intent to stir up contempt or hatred against any section of the public distinguished by race, caste, place of origin, political opinions, colour or creed -

(a) publishes or distributes any writing which is threatening, abusive or insulting;

(b) uses in any public place or at any public meeting or procession any gesture or word which is threatening, abusive or insulting; or

(c) broadcasts any matter which is threatening, abusive or insulting,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding Rs 25,000 and penal servitude not exceeding 10 years.

Article 21

1. The Public Gathering Act 1991 (see Annex XIII) has repealed the Public Order Act and now provides for the orderly conduct of public meetings and public processions.

1.2 Under section 4 of the Public Gathering Act, written notice must be given to the Commissioner of Police not less than seven days before the day of the meeting or procession. Within 48 hours of receiving this notice, the Commissioner of Police may -

(a) authorize the gathering but impose such conditions on its holding as he sees fit, or

(b) prohibit the gathering.

Any person aggrieved by a decision of the Commissioner of Police may refer the matter to the Judge in Chambers.

1.3 A police officer may direct the organizer of the public gathering to put an end to it where he has reasonable grounds to believe that the continuance of the gathering is prejudicial to public safety or public order. The Commissioner of Police may use force to prevent the holding of a public gathering or disperse it or prohibit access to the gathering where no notice has been given.

1.4 It is an offence to take part in an unlawful assembly, which is defined as a group of "12 or more persons who -

(a) are assembled with intent to commit an offence; or

(b) being assembled even for a lawful purpose conduct themselves in such manner as is likely to lead to or provoke a breach of the peace."

2.1 Section 4 of the Public Gathering Act was considered in the case of Bizlall v. Commissioner of Police (1993) MR 213, where the Supreme Court gave the following interpretation to the section:

"The general rule would be to allow a gathering be held. It is only if the imposing of conditions would not suffice to prevent public

disorder, damage to property or disruption of the life of the community, that the Commissioner (of Police) would be entitled, and even then on a reasonable belief, to prohibit a gathering."

Article 22

1. There is no restriction whatsoever on the formation of political parties in Mauritius. In fact people may form a political party de facto and only register it with the Electoral Supervisory Commission for election purposes.

2. The Trade Unions and Labour Relation Bill (No. IX of 1994) purports to repeal the Industrial Relations Act and provides for -

(a) a simplification of the procedures for registration and recognition of trade unions;

(b) the provision of a democratic approach in the organization and management of trade unions;

(c) an improvement in the scope for collective bargaining;

(d) the provision of a more comprehensive mechanism for the settlement of industrial disputes in both public and private sectors, thereby improving the avenues for a speedy and effective settlement;

(e) a redefinition of the procedure leading to strike action;

(f) the transfer to independent institutions of the power formerly vested in the Minister to follow up on the reporting of industrial disputes.

The Bill has not yet become law.

Articles 23 and 24

1. The Child Protection Act 1994 (see Annex XIV) which defines a child as "any unmarried person under 18" provides for the issue of -

(a) an emergency protection order, where a Magistrate is satisfied by information on oath that there is reasonable cause to believe that a child is suffering or likely to suffer significant harm. The order shall have effect for a (renewable) period of eight days;

(b) a committal order, where the court is satisfied that there is reasonable ground to believe that a child is ill-treated, neglected, abandoned, destitute or otherwise exposed to harm and that it is in his interest to be committed to a place of safety.

1.2 The Act also creates the following offences:

(a) ill-treating or otherwise exposing a child to harm;

(b) neglecting or abandoning a child;

(c) child sexual abuse and causing, inciting or allowing a child to engage in prostitution;

(d) child trafficking;

(e) child mendicity.

2.1 The Criminal Code (Amendment) Act 1990 raises the age of consent from 12 to 16; it is now an offence to have sexual intercourse with a female who is under 16, even with her consent.

2.2 The offence of incest was created in 1991 and the ambit of the offence is wide enough to cover situations where the person charged has had sexual intercourse with, or committed an indecent act upon, his stepchild or adoptive child (of whatever age) or a child of whatever age whose custody or guardianship has been entrusted to the person charged by virtue of another enactment or of a court order.

2.3 It is interesting to note that under Section 242 of the Criminal Code it is a sufficient defence for a man who commits manslaughter on his spouse, as well as on the accomplice at the very moment he finds them in the act of adultery. This may constitute one of the last vestiges of sexual discrimination in Mauritius as it would appear that such a crime on the part of the female spouse would not be excusable.

3. The Civil Status (Amendment No. 2) Act 1990 amends the Code Napoleon by deleting any reference to adulterine children so that -

(a) it is now feasible for a biological parent to recognize his or her adulterine child, and

(b) reciprocal rights of succession can exist between an adulterine child whose filiation is established and his or her parent.

The Supreme Court held in Naujeer v. Registrar of Civil Status and Ministère Public (1991) MR 117 that the Act applies to children born before the commencement of the Act, subject to rights acquired under the law as it existed prior to 1991.

4.1 The National Children's Council (NCC) was established in 1990 under the aegis of the Ministry for Women's Rights with the aim of promoting the welfare of children generally. It is worth noting that the Committee administering the Council has the power to summon anybody to give

evidence relating to children who "appear to be in need of assistance on account of any mental or physical danger to which they appear to be exposed."

4.2 The National Children's Council investigates, and intervenes mainly in, cases of child abuse and provides counselling and support for the victims. There is a hot line available for the reporting of child abuse. In 1992, 922 cases of child abuse and neglect were reported to the National Children's Council; about 30 per cent of the cases were found to be genuine.

Article 26

1. Section 16 of the Constitution, which provides protection from discrimination, only makes reference to "race, caste, place of origin, political opinions, colour or creed"; no mention is made of "sex".

1.2 On 8 March 1995 (International Women's Day), the Prime Minister officially announced that section 16 of the Constitution would be amended so as to expressly prohibit discrimination on the ground of sex. This amendment will precede changes to be brought to the law on citizenship (see comments under Art. 3).

2. In the case of Bhewa v. Government of Mauritius (1990) MR 79, the Supreme Court observed that the maintenance of monogamy, including measures designed to safeguard the family and to ensure the largest measure of non-discrimination against women, whether as wives or daughters, are reasonably justifiable in our democratic society, as well as in furtherance of the obligations undertaken by Mauritius under, inter alia, Article 26 of the Covenant. (See Annex XV.)

Article 27

1. The African Cultural Centre Trust Fund Act 1989 set up an African Cultural Centre Trust Fund, the object of which is to "preserve and promote African Culture", while the Islamic Cultural Centre Trust Fund, also created by statute, aims to "preserve and promote Islamic art and culture" and to "promote the study of Arabic and Urdu". Similar Trust Funds have been set up to promote Indian and Chinese Culture, respectively.

2.1 The Civil Status (Amendment No. 2) Act 1990 establishes a Muslim Family Council which, inter alia, keeps a register of all marriages celebrated in accordance with Muslim rites and which may make rules governing marriages celebrated in accordance with Muslim rites and the dissolution of such marriages. The same Act also makes provision for the celebration by authorized persons of religious marriages having civil effect.

2.2 The Government facilitates the travel of Mauritian Muslims who make the haj pilgrimage to Mecca.

2.3 The Supreme Court has held, however, in the case of Bhewa v. Government of Mauritius (1990) MR 7 (see Annex XV) that the relevant provisions of the Constitution do not warrant the enactment of personal laws for the various minorities of the country.

CONCLUSION

Article 27 of the Covenant is of particular importance to Mauritius as all communities of Asian, European and African origin live peacefully side by side in Mauritius because all the fundamental rights enshrined in the Constitution and restated in the Covenant are respected. Mauritius is a secular State, but all religions are subsidized. People are encouraged to practise their ancestral cultures. A national show would now consist of performances, songs and dances originating from Europe, China, the Indian subcontinent and Africa. All languages are taught in the schools so that everybody is given the opportunity to use his own language.

LIST OF ANNEXED DOCUMENTS

I	UDM v. Governor-General and Ors (1990) MR 118
II	Valayden and Ors v. President of Republic (1995) SCJ 16
III	Philip Rogers v. Comptroller of Customs (1994) SCJ 115
IV	Guyot and anor v. Government of Mauritius (1991) MR 156
V	Union of Campement Sites Owners and Lessees v. Government of Mauritius (1984) MR 100
VI	Heeralall v. Commissioner of Prisons (1992) MR 70
VII	Bail Act 1989
VIII	Pelladoah v. Development Bank of Mauritius (1992) MR 5
IX	Gulam Rassool and Mukhtar Ali v. Government of Mauritius (1989) MR 227
X	Dangerous Drugs Act
XI	Glover v. Boodhoo (1992) MR 259
XII	DPP v. Gilbert Ahnee and Ors (1994) SCJ 100
XIII	Public Gathering Act 1991
XIV	Child Protection Act 1994
XV	Bhewa and Alladeen v. Government of Mauritius and D.P.P. (1990) MR 79